

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NOE RODRIGUEZ,)	
)	
Petitioner,)	No. C 05-4573 CRB (PR)
)	
vs.)	ORDER TO SHOW CAUSE
)	
M. S. EVANS, Acting Warden,)	
)	
Respondent.)	
_____)	

Petitioner, a state prisoner incarcerated at Salinas Valley State Prison, has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254.

BACKGROUND

Petitioner was convicted by a jury in the Superior Court of the State of California in and for the County of Santa Clara of multiple sexual offenses committed against four girls under the age of 14. On or about November 30, 2001, he was sentenced to a 43-year determinate term, plus an indeterminate term of 90 years to life, which was run consecutively to the determinate term.

1 On November 14, 2003, the California Court of Appeal reversed the
2 judgment of the trial court as to the offenses relating to one of the victims and
3 remanded the matter for resentencing. The court affirmed the convictions for the
4 offenses relating to the other victims in all respects, however.

5 On January 28, 2004, the Supreme Court of California denied review.

6 DISCUSSION

7 A. Standard of Review

8 This court may entertain a petition for a writ of habeas corpus "in behalf
9 of a person in custody pursuant to the judgment of a State court only on the
10 ground that he is in custody in violation of the Constitution or laws or treaties of
11 the United States." 28 U.S.C. § 2254(a).

12 It shall "award the writ or issue an order directing the respondent to show
13 cause why the writ should not be granted, unless it appears from the application
14 that the applicant or person detained is not entitled thereto." Id. § 2243.

15 B. Claims

16 Petitioner seeks federal habeas corpus relief by raising several claims,
17 including prejudicial admission of evidence and improper denial of request to
18 replace defense counsel. Liberally construed, the claims appear cognizable under
19 § 2254 and merit an answer from respondent. See Zichko v. Idaho, 247 F.3d
20 1015, 1020 (9th Cir. 2001) (federal courts must construe pro se petitions for writs
21 of habeas corpus liberally).

22 CONCLUSION

23 For the foregoing reasons and for good cause shown,

24 1. The clerk shall serve by certified mail a copy of this order and the
25 petition and all attachments thereto on respondent and respondent's attorney, the
26 Attorney General of the State of California. The clerk also shall serve a copy of
27

1 this order on petitioner.

2 2. Respondent shall file with the court and serve on petitioner, within
3 60 days of the issuance of this order, an answer conforming in all respects to Rule
4 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of
5 habeas corpus should not be granted. Respondent shall file with the answer and
6 serve on petitioner a copy of all portions of the state trial record that have been
7 transcribed previously and that are relevant to a determination of the issues
8 presented by the petition.

9 If petitioner wishes to respond to the answer, he shall do so by filing a
10 traverse with the court and serving it on respondent within 30 days of his receipt
11 of the answer.

12 3. Respondent may file a motion to dismiss on procedural grounds in
13 lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the
14 Rules Governing Section 2254 Cases. If respondent files such a motion,
15 petitioner shall file with the court and serve on respondent an opposition or
16 statement of non-opposition within 30 days of receipt of the motion, and
17 respondent shall file with the court and serve on petitioner a reply within 15 days
18 of receipt of any opposition.

19 4. Petitioner is reminded that all communications with the court must
20 be served on respondent by mailing a true copy of the document to respondent's
21 counsel. Petitioner must also keep the court and all parties informed of any
22 change of address.

23 SO ORDERED.

24 DATED: March 6, 2006

25 
26 _____
27 CHARLES R. BREYER
28 United States District Judge